

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE:	)	
	)	
ROBIN RENEA WORSHAM,	)	CASE NO. 03-60109 JPK
	)	Chapter 7
Debtor.	)	
*****	)	
OKECHI NWABARA, IJEOMA	)	
NWABARA, and MBANEFO ONYEKA,	)	
Plaintiffs,	)	
v.	)	ADVERSARY NO. 04-6135
ROBIN RENEA WORSHAM,	)	
Defendant.	)	

FINAL JUDGMENT DETERMINING CASE

This adversary proceeding came before the Court for trial on August 3, 2005. By the operation of the Court's order of March 16, 2005, there are two separate cases within this adversary proceeding. The first is the complaint of Okechi Nwabara and Ijeoma Nwabara against the defendant/debtor; the second is the complaint of the Mbanefo Onyeka against the defendant/debtor.

At the trial scheduled to commence at 9:00 a.m. on August 3, 2005, the plaintiffs appeared solely by their attorney Lemuel Stigler; the defendant/debtor appeared solely by her counsel Seth Buitendorp. There were thus no witnesses through whom any evidence could be introduced.

Attorney Stigler stated that the plaintiffs Okechi Nwabara and Ijeoma Nwabara had decided to dismiss their action against the debtor/defendant. Attorney Buitendorp consents to the dismissal. The Court finds that all claims asserted by the plaintiffs Okechi Nwabara and Ijeoma Nwabara shall be dismissed with prejudice against the debtor/defendant Robin Renea Worsham.

On August 2, 2005, Attorney Stigler, on behalf of the plaintiff Mbanefo Onyeka, filed a motion to continue the trial set for August 3, 2005. As stated on the record by Attorney Stigler,

his office provided full notice to the plaintiff of the scheduled date for trial. The plaintiff then communicated with Attorney Stigler on August 2 that he was in Phoenix, Arizona, could not attend the trial, and had not realized that his attendance at the trial was necessary. Attorney Stigler advised that the plaintiff did not provide any other reason for his inability to attend the trial scheduled for August 3, including any circumstances which required him to be in Phoenix in exclusion of attending that trial.

The Court finds that the continuance requested on August 2, 2005 should be denied, for lack of any basis upon which it can be sustained.

In an action under 11 U.S.C. § 523(a)(2), the burden of proof is on the plaintiff to establish grounds for excepting an indebtedness from discharge; *Matter of McFarland*, 84 F.3d 943 (7<sup>th</sup> Cir. 1996). Because there was no person in attendance at the trial other than the attorneys for the respective parties, there was no means by which evidence could be submitted on the plaintiff Onyeka's complaint. As a result, the plaintiff has failed to satisfy his burden of proof with respect to the allegations of his complaint under 11 U.S.C. § 523(a)(2) against the defendant, and judgment in favor of the defendant is therefore appropriate. In addition, under the circumstances, the Court deems this result to be in consonance with the most appropriate sanction which can be imposed for failure of plaintiff Onyeka to attend a trial of which he had full and proper notice in an action upon a complaint which he himself had filed; the sanction of dismissal of the complaint against the defendant.

Due to the fact that there was no mechanism for submission of evidence at the trial, plaintiff Onyeka failed to meet the burden of proof required by Fed.R.Bankr.P. 4005 with respect to any action asserted under 11 U.S.C. § 727(a), and the Court thus finds that judgment must be entered for the defendant/debtor with respect to those claims. Because the Court's determination is other than a dismissal of a complaint objecting to the debtor's discharge "at the plaintiff's instance," the Court finds that the provisions of Fed.R.Bankr.P. 7041 do not apply to

the determination made by this judgment.<sup>1</sup>

IT IS ORDERED, ADJUDGED AND DECREED that the claims of the plaintiffs Okechi Nwabara and Ijeoma Nwabara asserted pursuant to 11 U.S.C. § 523(a)(2)(A), and 11 U.S.C. § 727(a)(2) and § 727(a)(4), against the defendant are dismissed with prejudice by consent of the parties plaintiff and defendant pursuant to Fed.R.Bankr.P. 7041/Fed.R.Civ.P. 41(a)(2).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for continuance filed by the plaintiff Mbanefo Onyeka on August 2, 2005 is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the plaintiff Mbanefo Onyeka and in favor of the defendant with respect to claims asserted by said plaintiff under 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 727(a)(2) and 11 U.S.C. § 727(a)(4).

Dated at Hammond, Indiana on August 10, 2005.



J. Philip Klingeberger  
United States Bankruptcy Court

Distribution:

Attorney Lemuel Stigler

Attorney Andrew Kopko

Chapter 7 Trustee Gordon E. Gouveia, 433 W. 84<sup>th</sup> Drive, Merrillville IN 46410  
US Trustee

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<sup>1</sup> In addition to claims of nondischargeability under that statute, subparagraphs B and C of the plaintiffs' original complaint requested denial of the defendant's/debtor's discharge pursuant to 11 U.S.C. § 722(a)(2) [*sic*, 727(a)(2)] and 11 U.S.C. § 727(a)(4). The Court issued its Order Scheduling Trial on May 13, 2005, scheduling the trial for August 3, 2005 commencing at 9:00 a.m. As stated in that order, the complaints were deemed by the Court to be limited to actions asserted under 11 U.S.C. § 523(a)(2)(A). Thus, with respect to the complaint's asserted actions under 11 U.S.C. § 727, the Court's order of May 13, 2005 essentially removed those issues from the case. Fed.R.Bankr.P. 7041 generally adopts the provisions of Fed.R.Civ.P. 41 in adversary proceedings, subject to the caveat that "a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States Trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper (emphasis supplied)." The prayers for relief in the complaint pursuant to § 727(a) are not being dismissed in this case "at the plaintiff's instance;" rather, they are being dismissed by the Court's determination. The Court thus deems provisions of Fed.R.Bankr.P. 7041 regarding notice to the trustee and the United States Trustee to be inapplicable to the circumstances of this case.